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BOOK REVIEWS.

A STUDY OF THE UNITED STATES STEEL CORPORATION in Its Industrial and Legal Aspects. By Horace L. Wilgus. Chicago : Callaghan & Company. 1901. pp. xiii, 222.

This book is not a treatise ; but as a short monograph on a most interesting subject it is well deserving of attention. In its industrial aspects the organization of the United States Steel Corporation was something unprecedented. No private corporation ever existed before with control over such vast resources. Mr. Wilgus tries to point out the immensity of the scheme fostered by the capitalists who were behind the movement to amalgamate the different plants of the steel industry in this country. He does this remarkably well. He proves himself a master of the art of stating figures eloquently. In addition to this, he has given to the general public in convenient form a collection of papers which were drawn up by lawyers connected with the organization of the new company. This collection is of especial interest to other members of the profession. For it establishes an historical record of the kind of work which our ablest attorneys are doing to-day in a constructive spirit. After all, there is no doubt that, while a hundred years ago the attention of the great legal minds of the period was chiefly occupied with the drafting of State and Federal constitutions, at the present time the most characteristic feature of the practice of law in this country is the creation and protection of vast private corporations which seek shelter under the constitutional provisions framed by another generation. That being so, any attempt to preserve specimens of the papers by which our commercial architects have erected their structures is praiseworthy.

Besides emphasizing the economic significance of the new corporation, Mr. Wilgus deals with the question of its legality. On this branch of his subject he says much in short compass. Briefly stated his opinion amounts to this: The anti-trust acts passed in various States are entirely sufficient to work the destruction of the new corporation, provided the prosecuting officers in the several States are willing to institute *quo warranto* proceedings to obtain a forfeiture of the charters of its several constituent members. Mr. Wilgus reminds us that the decisions in the Sugar Refining Case¹ and the Standard Oil Case² announce a principle of law which fully enables every State to punish its own corporations for entering a "trust" directly or indirectly. That principle can be stated as follows: When the question arises between a corporation and the State of its creation as to whether the corporation has acted illegally, concerted acts of a majority of the stockholders will be deemed the

¹ 121 N. Y. 582 ; (1890) 54 Hun, 354. ² (1892) 49 Ohio St. 137.

acts of the corporation itself, and the fiction of law distinguishing the acts of the stockholders from the acts of the corporation will be disregarded. If this be so, evidently when the majority of the stockholders in corporation A. exchange their shares of stock for shares in a new corporation organized secretly or ostensibly for the purpose of monopolizing a given field of industry, corporation A. by its stockholders has committed a crime and is liable to dissolution. Theoretically Mr. Wilgus's suggestion is sound. But another aspect of the case is to be considered. If the destruction of its own domestic corporations is the only step which a particular State can take against a foreign "trust" or stockholding corporation, then the State will probably suffer in silence. No State can afford to wage war in general on its own corporations and thus cripple its industries. As a matter of practical policy each State desires to attack the "trust" and leave its own smaller corporations unimpaired. We find this tendency illustrated by the suit which the State of Minnesota recently brought against the Northern Securities Company of New Jersey.¹ The State did not institute proceedings to dissolve the Great Northern Railway Company, a domestic corporation whose stockholders were guilty of misfeasance. To have done so would have been almost suicidal.

Is there then no way in which the modern "trust," in the guise of a stockholding corporation, can be practically assailed or guarded against? Certainly there is a way. The only reference which Mr. Wilgus makes to it is in this sentence (p. 92): "Since the right to issue corporate stock at all is a franchise from the State creating the corporation, the State can say whether any part of it can be owned by any person, either in or out of the State, and prescribe the conditions and terms upon which it may be held." The principle here enunciated underlies the provision of the Georgia State constitution² to the effect that "the general assembly of this State shall have no power to authorize any corporation to buy shares or stock in other corporations in this State or elsewhere." So long as this clause remains in force Georgia will never find itself in the predicament of Minnesota and other States which feel outraged by stockholding corporations organized in semi-piratical States. But if a State³ sanctions the ownership of stock in domestic corporations by corporations, foreign and domestic, to an unlimited extent, its complaint should not be heeded by the courts when it attacks a foreign corporation which has bought such stock. Its attitude is inconsistent. This point is specifically made by Mr. Eddy in his work on Combinations.⁴

A State can prevent a "trust" from invading its territory in the shape of a stockholding corporation organized elsewhere. The provision of the Georgia constitution already quoted has been acted upon and declared valid.⁵ But it is thought that when a State has

¹ 22 Sup. Ct. 308. ² Art. 4, sec. 2, par. 4 (1877)

³ *C f.* N. Y. Stock Corp. Law, § 40.

⁴ §624. See also *Commonwealth v. N. Y. R. R. Co.* (1890) 132 Pa. St. 591. ⁵ *Clarke v. Central R. R. & B. Co. of Georgia* (1892) 50 Fed. 338.

allowed shares of stock created by it to be owned by other corporations and after some of this stock has been bought by a foreign "trust," the State cannot then change the nature of the stock and prescribe who shall not be owners thereof. Such a measure could be successfully resisted. It would be a violation of vested property rights. Voting the stock could hardly be considered a business as distinguished from a property right, and a foreign corporation owning the stock would be able to retain the privilege of voting as a shareholder even after a license to do business within the State had been revoked. The right of a State to define the nature of stock created by it is a right which each State can exercise so as to prevent industrial combinations. But the power is preventive, and if it goes unexercised we may conclude that the public is not as much opposed to the centralization of control in all our industries as is sometimes asserted.

CASES ON THE LAW OF DAMAGES. Selected by Floyd R. Mechem. Third Edition. St. Paul: West Publishing Co. 1902. pp. xvi, 758.

The cases republished in this volume have been selected by the editor, we are told in the Introduction, with a view to answering the question, "What is the measure of damages?" In the main, the selection appears to have been wisely made, and to justify the editor's hope "that the book may prove reasonably adequate to exhibit the most important aspects of the law of damages." Some points have not been dealt with, it is true, which another collector of cases on this subject might consider quite important. For example, there is no case bearing on the question of damages payable by parties to negotiable paper. But, as the editor remarks in his preface to this edition, the subject is so broad, that many questions must remain unnoticed in a book of cases.

The typography of this book cannot be admired. The cases are reprinted from the plates of the National Reporter System. Not only do the pages display double columns of fine print, but they furnish samples of four distinct styles of type. Undoubtedly, this use of old plates renders the volume cheaper in price, but it gives it a cheap appearance, too. The practice results in another feature which is unworthy of commendation. Cases are "reproduced entire," although large parts of them have no bearing on the measure of damages. Notable examples of this are afforded by *McIntyre v. Sholtz* (p. 41) and *Roehm v. Horst* (p. 377). In the former case, but four lines, out of a page and a half, are devoted to the measure of damages. The latter case fills seven pages, but less than one-third of a page has to do with the special topic of the book. The external appearance of the volume is quite attractive.

COMMERCIAL TRUSTS; THE GROWTH AND RIGHTS OF AGGREGATE CAPITAL. By John R. Dos Passos. New York: G. P. Putnam's Sons. 1901. pp. viii, 137.

It is not easy to assign a place to this twice-told tale. Though its author is a prominent and successful lawyer, its subject-matter